IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1445 of 2005
With
SPECIAL CIVIL APPLICATION No. 17376 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAYANTIBHAI NATHALAL DARJI - Petitioner(s)

Versus

PANCHMAHAL DIST.CO-OP. BANK LTD. & 1 - Respondent(s)

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Appearance :
MR DIPAK R DAVE for Petitioner(s) : 1,
MR MAHENDRA K PATEL for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2,
RULE NOT RECD BACK for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 12/09/2005

ORAL JUDGMENT

1. Both these petitions have been heard for final disposal with the consent of learned advocates appearing

for the parties.

2. Special Civil Application No.17376/05 has been filed by the Panchmahal District Co-operative Bank Ltd. challenging the orders passed by the controlling authority under the payment of Gratuity Act 1972 (hereinafter referred to as the said Act) dated 26th November, 2004 and one passed by the appellate authority dated 4th May, 2005. By an order dated 26/11/2004, the Controlling Authority directed the petitioners to pay a sum of Rs. 1,06,154/- with 10% interest to the respondent employee. The appeal filed by the petitioners came to be rejected by the appellate authority. The petitioners have therefore challenged these orders in the said petition.

3. Special Civil application No. 1445/05 has been filed by the employee against the Bank. It is the case of the employee in this petition that he is entitled to receive an amount of Rs. 1,84,967/- from the Bank by way of gratuity. It is contended that the Bank has already received the said amount from the Life Insurance Corporation. It is contended that the Bank has no authority to withhold the same amount.

4. In so far as Special Civil Application No. 17376/05 which is filed by the employer Bank is concerned, it can be seen that the controlling authority under the said Act gave cogent reasons for allowing the application of the employee. The objection of the petitioners were turned down. It was observed that the fact that the employee worked from 1/7/76 till 15/1/2000 is not in dispute. The fact that he was receiving Rs. 8,000/- by way of salary at the time of his retirement was also not in dispute. In view of the above findings the controlling authority relying on the decision of this Court found that the gratuity of the employee could not have been forfeited as none of the factors envisaged under Section 4(6) of the said Act were available to the Bank. Accordingly an order came to be passed on 26th November,2004 directing the Bank to pay gratuity to the employee concerned amounting to Rs. 1,06,154/-.

5. The appeal filed by the Bank came to be rejected. The Bank has challenged these orders before this Court. It was strongly urged on behalf of the petitioners that the appellate authority did not state the reasons for rejection of the appeal of the petitioners. It was,

therefore, prayed that the proceedings be remanded to the appellate authority for fresh consideration.

6. It was also contended that the respondent was involved in serious misconducts of misappropriation of amounts belonging to the Bank.

7. On the other hand learned advocate Shri Gadhia appearing for the employee submitted that the authorities below committed no error as the employee was made to superannuate w.e.f. 15.1.2000 by the Bank. He was,therefore entitled to receive his gratuity. In short he supported the orders passed by the authorities below. Reliance was placed on the decision of learned Single Judge of this Court in **Gujarat State Road Transport Corporation vs. Devendrabhai Mulvantrai Vadiya reported in 2003 (3) GLH 376** as upheld by the Division Bench decision dated 5th May, 2005 passed in Letters Patent Appeal No. 649/04 in Special Civil Application No.8990/03.

8. Section 4 (6) of the said Act empowers the employer to forfeit the gratuity payable to the employee on grounds mentioned thereunder. Section 4 (6) reads as

follows:

> (6)Notwithstanding anything contained in sub-section (1),
> (a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;
> (b)the gratuity payable to an employee (may be wholly or partially forfeited)
> (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or
> (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

9. In the present case it is not in dispute that before his superannuation the employee was not terminated for any act, willful omission or negligence. It is also not in dispute that services of the employee were not terminated for riotous or disorderly conduct or for any other act of violence nor his services were terminated for any act which constitutes an offence involving moral turpitude committed by him in course of his employment. In that view of the matter as held by the above mentioned decision of this Court in **Gujarat State Road Transport Corporation vs. Devendrabhai Mulvantrai Vaidya reported in 2003 (3) GLH 376** as upheld by the Division Bench it

was not open for the employer to withhold or forfeit the gratuity payable to the employee. The Controlling authority, therefore, committed no error in ordering payment of gratuity in favour of the employee. In this view of clear position the orders are required to be upheld notwithstanding the fact that the order of the appellate authority is not elaborate. Ordinarily this Court would have been inclined to remand the proceedings to the appellate authority for reconsideration and for passing speaking reasoned order. In this case however when the legal position is amply clear, in exercise of power under Article 226 of the Constitution of India, I do not find it necessary to remand the proceedings on technical grounds. The petition filed by the Bank, therefore, is required to be rejected.

10. In so far as the petition filed by the employee, Special Civil Application No.1445/05 is concerned, his case is for grant of higher gratuity than one fixed by the controlling authority. Accepting such a request will go counter to the order passed by the controlling authority. If the employee was aggrieved by the order that the controlling authority passed, it was open for him to file appeal before the appellate authority. It

may be noted that in the present petition also the employee has not challenged the order of the controlling authority. Therefore, while declining to interfere in Special Civil Application NO. 1445/05 it is clarified that it will be open for the employee to approach the appellate authority challenging the order passed by the controlling authority if he is aggrieved by such an order. I am sure if the employee files an application for condonation of delay the appellate authority shall consider such an application bearing in mind the fact that the employee had filed above mentioned petition before the High Court and was pursuing his remedy before the High Court and consider the appeal on merits.

11. In the result Special Civil Application No. 17376/05 is rejected. Special Civil Application No. 1445/05 is rejected subject to the above observations. Rule discharged.

(Akil Kureshi, J.)

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